all examined the problem of part performance in its equitable aspects and determined upon some theory which it proposed to maintain. In such an inquiry it is submitted that a consideration of the classic cases would do no harm. The policy of the court has been otherwise. If there exist carefully reasoned decisions in Michigan dealing with this problem, the Supreme Court at its last term did not call attention to them. It is not pretended that *Fowler* v. *Isbell* and *Bromeling* v. *Bromeling, supra,* are erroneously decided or that the result does not make for 'justice;' but it is justice without law. It may be desirable to repeal the Statute of Frauds, though that is scarcely the function of a court of equity. It may even be desirable that new exceptions should be introduced by the courts, but if this is to be done, may one not hope that the court will somehow gain a perspective larger than is afforded by the 'equities' of any particular case? Is it too much to ask that the profession be given something more than a series of decisions on "the facts?" W. T. B.

CONTRACT OF INFANT—EVIDENCE, COMPETENCY OF WITNESS UNDER SURVIVORSHIP STATUTE.—Two questions are presented by the case of *Signaigo* v. *Signaigo,* (Mo. 1918), 205 S. W. Rep. 23: *First,* the enforcibility of the contract of an infant, fully performed by her, to live with a man and his wife as their adopted child so long as they should live, in consideration that the infant should have all the property of the foster parents upon their death; and *Second,* the competency of the consenting mother of the infant to testify in support of the infant's claim.

The proceeding was one in equity for the partition among his heirs at law, of the lands of which David Signaigo died seized. Edna Amrein was made a party on her petition setting up a claim to the lands under the contract above referred to. It was conceded that deceased died intestate and without having taken any formal steps to adopt the said Edna; that she did live with the said David Signaigo and his wife from the time she was fourteen years old, that being the time of the making of the contract, until the death of the said David some nine years later, his wife having pre-deceased him but a few months, and that no steps had been taken to actually transfer the title of his property to the said Edna.

The first question would seem not difficult of solution through the application of general principles quite well recognized by the courts of Missouri. In but one case is the infant's contract invalid because he is an infant, and that is where the contract is palpably to his injury, a proposition too elementary for the citation of authorities. There is nothing which marks this contract as belonging to this class.

The dissenting opinion proceeds upon the theory that the contract is one for adoption only, and that the only possible parties to such a contract are the natural and the adopting parents. And apparently forgetting that traffic in human beings is now unlawful, regards the infant as only the "subject matter" of the contract, and concludes that what the child may actually do toward the making of such a contract, or in performance of its terms, cannot affect its legal status.

The contract as found by the jury whose findings were adopted by the court, was something more than one for the adoption of the child. By its terms it provided that she should live with Signaigo and his wife so long as they should live, and at their death should have all his, Signaigo's property. Such a contract, if fully performed by the infant, will be enforced in equity through a decree for specific performance: *Sharkey* v. *McDermott,* 91 Mo. 647; *Healy* v. *Simpson,* 113 Mo. 340; *Martin* v. *Martin,* 250 Mo. 539; *Crawford* v. *Wilson,* 139 Ga. 654; *Wright* v. *Wright,* 99 Mich. 170; *Odenbreit* v. *Utheim,* 131 Minn. 56; *Van Duyne* v. *Van Duyne,* 12 N. J. Eq. 142; *Van Tine* v. *Van Tine,* N. J. Eq., 15 Atl. 249; *Jordan* v. *Abney,* 97 Tex. 296.

And it certainly would be no defense to the enforcement of such a contract that the opposite parties had been guilty of a breach of their own undertaking by refusing to take the formal steps to adopt the infant: *Starnes* v. *Hatcher,* 121 Tenn. 330.

No question is raised as to the right of the child to take steps to enforce her rights under the contract, upon the theory that it is only a contract for her benefit and not one to which she is a party, and no discussion is given here of the question of her right so to do. The general rule would permit it. *Gandy* v. *Gandy,* 30 L. R. Ch. Div. 57.

The question of evidence arose upon an objection to the competency of the mother of Edna to testify in support of the claimed agreement, such objection being based upon the following statute:

"No person shall be disqualified as a witness in any civil suit or proceeding at law or in equity, by reason of his interest in the event of the same, as a party or otherwise, but such interest may be shown for the purpose of affecting his credibility: *Provided,* that in actions where one of the original parties to the contract or cause of action in issue and on trial is dead or is shown to the court to be insane, the other party to such contract or cause of action shall not be admitted to testify either in his own favor or in favor of any party to the action claiming under him, and no party to such suit or proceeding whose right of action or defense is derived to him from one who is, or if living would be, subject to the foregoing disqualification, shall be admitted to testify in his own favor, except as in this section is provided." REV. STAT. MO. 1909, § 6354.

The prevailing opinion allows the testimony of the mother upon the theory that this statute does not disqualify one as a witness because he is the survivor of two or more parties to a contract, if he actually were such survivor, nor because he may have an interest in the popular sense; if that interest be not such as would give rise to some right which the law would recognize, a financial or a pecuniary interest. That the only case in which a witness is disqualified is that one where the surviving party to a contract or cause of action is called to testify in his own favor, or in favor of one claiming under him.

This theory assumes that the language, "the other party to such contract or cause of action" is but descriptive of the person who may be disqualified, and disqualified only, if he is called to testify in his own favor, or in favor of one who claims through him. It is argued that the mother was not called to

testify in her own favor, nor was her daughter, in support of whose contention she was called to testify, claiming through her. The mother was not a party to the cause, she never had the interest which the daughter is seeking now to enforce, and the daughter therefore can not now be claiming through her.

It is clear upon general principles, that the "proviso" of the statute, being in derogation of its general purpose, which is to eliminate the common law doctrine of disqualification for interest, should bear a strict construction, if that be necessary to uphold the general purpose of the statute. The language here is so unambiguous however that it scarcely seems necessary to invoke this principle. It is universally recognized, that the interest which disqualifies, under the old rule disqualifying for interest, with a single exception, is a financial, pecuniary or proprietary interest. The single exception is in the case of husband and wife, an exception which seems to have had its roots in the doctrine, indorsed if not fathered, by Lord COKE, that the effect of marriage was to destroy the personality of the parties to it: GILBERT'S EVIDENCE, 133. A parent was not disqualified for the reason alone that his child was a party, whether called to testify for or against him. See, WIGMORE'S EVIDENCE, § 600; MCNALLY'S EVIDENCE, 182. It was only because the witness stood in such relation to the controversy as that he might be advantaged pecuniarily or in some property right, that he was disqualified for interest. The conclusion is irresistible that one cannot testify in his own favor who has no interest to favor. No more can he testify in favor of one claiming through or under him except that other's right he is seeking to assert comes through or under the witness.

With this conclusion that the term "favor" as used in the statute, has reference only to favor having its stimulus in some pecuniary or proprietary interest, the conclusion results almost without argument, that the mother was not disqualified for this reason, for there is nothing upon which to base a claim that she ever had any such interest.

The dissenting opinion proceeds upon the theory that the mother was disqualified because a party to the contract, the opposite party to which was dead. The party, like the one interested, was at the common law disqualified. The statute removes that disqualification of the party because he is a party, as it does the disqualification of one interested because he is interested, save only that the disqualification still remains if the party is called to testify in his own favor and the opposite party to the contract or cause of action is dead or insane. The witness in this case was not called so to testify, for as previously shown, she had not then, and never had had, any interest to favor.

The case of *Crawford* v. *Wilson, supra,* is one in which a contract similar to the one involved in this *Signaigo* case was under investigation. The arrangement was first made with the grandmother, subsequently adopted by the mother and carried out by the child. The child brought the action and called the grandmother and mother to establish the contract. Objection to their competency was pressed under the CIVIL CODE OF TENNESSEE, § 5858, which is similar to the Missouri statute, and they were both held competent upon the theory of lack of interest. V. H. L.